FILE COPY

SEP 17 1949

CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1949.

No. 228

WILLIAM R. BROWN,
Petitioner,

VS.

VINCENT O'BRIEN,
Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

REPLY BRIEF OF PETITIONER IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

WILLIAM R. BROWN,
10 South La Salle Street,
Chicago 3, Illinois,
Attorney for Petitioner.

CHAMPLIN-SHEALY COMPANY, CHICAGO 265

INDEX.

PAGE

Summary of Argument:

I. The question of constitutionality of the Emergency Price Control Act is before this court... 1

II. Congress cannot regulate the practice in the state courts 3

III. Respondent paid the $1320 in the course of business and cannot recover 3

Respondent has shown no reason why the writ should not issue 4

Conclusion 4

CITATIONS.

Dimick v. Scheidt, 293 U. S. 474 2

Minn. & St. Louis Ry. Co. v. Bombolis, 241 U. S. 211... 1, 3

Shearer v. Porter, 155 Fed. 2d 77 2

CONSTITUTION.

Seventh Amendment 2, 3

STATUTES.

Sec. 205 (e), Emergency Price Control Act 3

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1949.

No. 228

WILLIAM R. BROWN,

Petitioner,

VS.

VINCENT O'BRIEN,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

REPLY BRIEF OF PETITIONER IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

MAY IT PLEASE THE COURT:

We shall reply briefly to respondent's brief.

I.

The question of constitutionality of the Emergency Price Control Act is before this court.

At page 6 of the petition we said the validity of the Act is in question as denying the right of trial by jury. This question was raised by the answer (page 4 of Petition).

Respondent relies chiefly on *Minn. & St. Louis Ry. Co.* v. *Bombolis,* 241 U. S. 211, 219, in arguing that the Seventh Amendment does not apply to trials in State courts. This case did not involve an act of congress denying the right of trial by jury. The language quoted by respondent, page 13, clearly shows that the Seventh Amendment is a limitation on the power of congress to deny trial by jury.

This case shows that the act, see page 12 of petition, does violate the Seventh Amendment in denying a trial by jury in any court, either Federal or State.

It is the constitutionality of the act of congress that is before the court on this petition. The State courts held it did not violate the Seventh Amendment. This holding is in conflict with the decision of this court in *Dimick* v. *Scheidt,* 293 U. S. 474, 79 L. Ed. 603, 611.

There is no State statute in Illinois authorizing or empowering the State courts to enter judgments in jury cases in excess of the verdict or to weigh the facts and assess the damages. The question before the court is the constitutionality of the Act of Congress.

The case of *Shearer* v. *Porter,* 155 Fed. 2d 77, is another case that is in conflict with *Dimick* v. *Scheidt,* 293 U. S. 474.

II.

Respondent's second point is that Congress can regulate the practice in State courts.

Here again respondent relies chiefly on *Minn. & St. Louis Ry. Co.* v. *Bombolis*, 241 U. S. 211, 219, but the language quoted by respondent, pages 12, 13, shows that the statute there before the court was a state statute and the court held that the Seventh Amendment was not applicable to state statutes. At the same time the court points out that the Seventh Amendment is binding on Congress so it shows the Price Control Act is unconstitutional and therefore void and does not authorize any court to enter judgment for any amount.

This case held that the practice as to jury trials in state courts is to be regulated by the states and not by Congress.

III.

Respondent's Points III and IV is in reply to petitioner's Points IX, X and XI.

Respondent's claim is that because he occupied the premises as a home his payment of liquidated damages after surrender of the premises was not in the course of business.

He does not and cannot deny that he made the payment in the expectation of gain or profit.

Under the act, see pages 12, 13 of petition, it is the payment of rent that is the sale of a commodity, not the use of the premises. The payment was made for the sole purpose of gain and therefore in the course of business and only the administrator could bring suit for and on behalf of the United States.

Respondent presents no reasons or argument to show why the writ should not issue on these points. He shows by the conflict in authorities that the writ should issue to settle these questions which have not been heretofore before this court.

Conclusion.

For the reasons set forth in the Petition and Brief and in this Reply Brief Petitioner urges that the Writ of Certiorari prayed in the petition be granted to settle these important questions not heretofore decided by this Honorable Court.

Respectfully submitted,

WILLIAM R. BROWN,
Attorney for Petitioner.